No. 76-1714

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

FRANK ROSENTHAL, *Appellant*,

v.

STATE OF NEVADA and
STATE OF NEVADA GAMING COMMISSION,
Appellees.

On Appeal from the Supreme Court of Nevada

MOTION TO DISMISS OR AFFIRM

ROBERT F. LIST
Attorney General of the State of Nevada

ALVIN J. HICKS
Deputy Attorney General Gaming Division

1150 East William Street
Carson City, Nevada 89710

Attorneys for Appellees.

Of Counsel:

STUART PHILIP ROSS
WALLACE A. CHRISTENSEN
HOGAN & HARTSON
815 Connecticut Ave., N.W.
Washington, D.C. 20006

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

TABLE OF CONTENTS

	Page
STATEMENT OF THE CASE	1
QUESTIONS PRESENTED	10
APPELLANT'S FIRST "SUBSTANTIAL FEDERAL QUESTION"	11
APPELLANT'S SECOND "SUBSTANTIAL FEDERAL QUESTION"	15
APPELLANT'S THIRD "SUBSTANTIAL FEDERAL QUESTION"	19
APPELLANT'S FOURTH "SUBSTANTIAL FEDERAL QUESTION"	24
SUGGESTION OF MOOTNESS	31
CONCLUSION	32

TABLE OF AUTHORITIES

CASES:

Arnett v. *Kennedy*, 416 U.S. 134 (1974)	26
Atlanta Bowling Center, Inc. v. *Allen*, 389 F.2d 713 (5th Cir. 1968)	14
Bell v. *Burson*, 402 U.S. 535 (1971)	31
Bishop v. *Wood*, 426 U.S. 341 (1976)	20
Black v. *Cutter Laboratories*, 351 U.S. 292 (1956)	18
Board of Regents v. *Roth*, 408 U.S. 564 (1972)	17, 19, 20
Bryan v. *Austin*, 354 U.S. 933 (1957)	32
Cafeteria Workers v. *McElroy*, 367 U.S. 886 (1961)	26
Catrone v. *Massachusetts State Racing Commission*, 404 F. Supp. 765 (D. Mass. 1975), *vacated on other grounds*, 535 F.2d 669 (1st Cir. 1976)	22
Cline v. *Frink Dairy Co.*, 274 U.S. 445 (1927)	12
Connally v. *General Construction Co.*, 269 U.S. 385 (1926)	12
Diffenderfer v. *Central Baptist Church*, 404 U.S. 412 (1972)	32
Gelling v. *Texas*, 343 U.S. 960 (1952)	12
Goldberg v. *Kelly*, 397 U.S. 254 (1970)	25
Goss v. *Lopez*, 419 U.S. 565 (1975)	22
Grayned v. *Rockford*, 408 U.S. 104 (1972)	12
Hall v. *Beals*, 396 U.S. 45 (1969)	32

Page

Hornsby v. *Allen*, 326 F.2d 605 (5th Cir. 1964) 13, 14
Hubel v. *West Virginia Racing Commission*, 513 F.2d 240 (4th Cir. 1975) 17, 27
Interstate Circuit, Inc. v. *Dallas*, 390 U.S. 676 (1968) 12
Kunz v. *New York*, 340 U.S. 290 (1951) 12
Lewis v. *City of Grand Rapids*, 356 F.2d 276 (6th Cir.) *cert. denied*, 385 U.S. 838 (1966) 14
Marshall v. *Sawyer*, 301 F.2d 639 (9th Cir. 1962) 17, 27
Mathews v. *Eldridge*, 424 U.S. 319 (1976) 24, 25, 26, 28
Medina v. *Rudman*, 545 F.2d 244 (1st Cir. 1976) 16, 20, 21, 28
Meyer v. *Nebraska*, 262 U.S. 390 (1923) 21
Nevada Tax Commission v. *Hicks*, 73 Nev. 115 (1957) 26
Paul v. *Davis*, 424 U.S. 693 (1976) 20, 22, 23
Richardson v. *Wright*, 405 U.S. 208 (1972) 32
Sanks v. *Georgia*, 401 U.S. 144 (1971) 32
Smith v. *Organization of Foster Families for Equality and Reform*, 45 U.S.L.W. 4638 (decided June 13, 1977) 19
Spector Motor Service v. *McLaughlin*, 323 U.S. 101 (1944) 32
State ex rel Grimes v. *Board*, 53 Nev. 364 (1931) 27
Staub v. *City of Baxley*, 355 U.S. 313 (1958) 12
United States v. *Alaska Steamship Co.*, 253 U.S. 113 (1920) 32
United States v. *Petrillo*, 332 U.S. 1 (1947) 32
United States v. *Polizzi*, 500 F.2d 856 (9th Cir. 1974) 16, 32
Wisconsin v. *Constantineau*, 400 U.S. 433 (1971) 22

CONSTITUTIONAL PROVISIONS:

United States Constitution
First Amendment 12, 13
Tenth Amendment 10, 15
Fourteenth Amendment 17, 19, 20, 22, 23, 24, 31

STATUTES:

Nevada Revised Statutes
§ 463.130 2
§ 463.130(2) 20
§ 463.140 .....7, 8, 11, 15, 31
§ 463.150(1) 9

Page

§ 463.170 .....31, 32
§ 463.220 .....7, 8, 11, 15, 31
§ 463.220(4) 5, 30
§ 463.312 7
§ 463.315 .....7, 8, 19
§ 463.335(3) 10
§ 463.595(1) 2
§ 463.595(2) 3, 29

Chapter 571, Statutes of Nevada, 59th Session of the Nevada Legislature 31

REGULATIONS:

Nevada Gaming Commission Regulations
§ 3.090 9

OTHER AUTHORITIES:

Gambling in America, Final Report of the Commission on the Review of the National Policy Toward Gambling (Washington, D.C. 1976) 2, 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1714

FRANK ROSENTHAL, *Appellant,*

v.

STATE OF NEVADA and
STATE OF NEVADA GAMING COMMISSION,
Appellees.

On Appeal from the Supreme Court of Nevada

MOTION TO DISMISS OR AFFIRM

STATEMENT OF THE CASE

This case involves a decision by the State of Nevada to deny a gaming license to an admitted felon. It is therefore understandable why appellant, who raises procedural challenges, nevertheless chooses to ignore the full record below. Through a careful examination of those proceedings, the State of Nevada will demonstrate that appellant presents no substantial federal questions for review.

The gaming laws of Nevada are administered by two agencies created by the legislature, the Nevada Gaming Commission (hereinafter "the Commission") and the Nevada Gaming Control Board (hereinafter "the Board"). These agencies are charged with enforcing the declared public policy of the State which requires licensing "to protect the public health, safety, morals, good order and general welfare of the inhabitants of the State of Nevada. . . ." N.R.S. 463.130. The Board is composed of three full-time members and employs a large staff of investigators, analysts, accountants and other experts to monitor and police, on a day-to-day basis, all gaming operations of the State.[1] The Commission is a five-member body, also charged with administering the State's gaming laws, which meets at least monthly and in certain matters is responsible for acting upon recommendations of the Board. One such area is the granting of gaming licenses, including the granting of licenses to key employees, those "engaged in the administration or supervision of . . . the gaming activities of a corporate licensee. . . ." N.R.S. 463.595(1).[2]

---

[1] The magnitude of the Board's responsibilities in overseeing the State's largest industry cannot be understated: In 1974, for example, 47 percent of all State revenues were derived from licensed gambling. *Gambling in America*, Final Report of the Commission on the Review of the National Policy Toward Gambling (1976), p. 81.

[2] N.R.S. 463.595(1) requires that employees "engaged in the administration or supervision of . . . the gaming activities of a corporate licensee . . ." must themselves procure gaming licenses. The purpose of this provision is to prevent unqualified or undesirable individuals from infiltrating the gaming industry through the cover of a corporate license. This provision is part of the comprehensive legislative scheme designed to insure the continuing integrity of gaming in Nevada.

On January 23, 1975, the Commision convened a hearing focusing on appellant's status as an employee of Argent Corporation, an organization which, at the time, owned and managed four licensed casinos in Las Vegas. On the basis of this hearing, it was determined that appellant, as a "key employee" of Argent, was required to obtain a gaming license. N.R.S. 463.595(2) requires a key employee to file an application within 30 days of such a finding. Appellant, however, requested and was granted an extension of this filing deadline in order to resolve two pending federal indictments prior to the submission of his application for a gaming license. T.C.H., Jan. 23, 1975, pp. 143-152; T.C.H., Jan. 24, 1975, pp. 1-4, 18-19.[3]

In July of 1975, appellant filed an application for a Nevada gaming license with the Board. Pursuant to state law and appellant's authorization,[4] the Board conducted an investigation into appellant's background.

Upon completion of the Board's investigation, a public hearing was held by the Board on his license application. Appellant conveniently neglects to apprise this Court of several salient features of this hearing:

---

[3] "T.C.H." refers to Transcript of Commission Hearing and "T.B.H." refers to Transcript of Board Hearing, followed by the appropriate date and page number. These transcripts are included in the certified record appellees have transmitted to this Court.

[4] Appellant's application acknowledged that the Board would "cause an investigation to be made of my background, both personal and financial. . . ." Appellant authorized "any and all persons having information concerning me, either of public record or otherwise, to furnish it to a duly authorized agent" of the Board.

—Appellant was represented by two attorneys. T.B.H., Jan. 14, 1974, p. 2.

—It was a public hearing. *Id.*, p. 118.

—At appellant's request, fifteen individuals appeared before the Board and under questioning from appellant's counsel and Board members testified on his behalf. *Id.*, pp. ii-iii.

—Seven letters attesting to appellant's character were introduced and received into evidence. *Id.*, pp. iii-iv.

—Three Board employees were subpoenaed by appellant and testified at his request. *Id.*, pp. 67, 72, 74.

—Appellant testified on his own behalf. *Id.*, pp. 77-269.

—A certified transcript of the proceedings was made. *Id.*, p. 279.

During the course of the hearing appellant was given the opportunity to comment on or otherwise explain each of the sixteen arrests he listed on his application. *Id.*, pp. 89, 90-126, 156-160, 180-216, 221-225, 265-267. Moreover, appellant was given the same opportunity with respect to other evidence uncovered by the Board's investigation. For instance, extensive testimony was received from appellant pertaining to his North Carolina conviction for conspiracy to bribe a college basketball player at the 1961 NCAA championship tournament. *Id.*, pp. 180-209. The Board heard and considered appellant's response to sworn testimony given before a United States Senate Subcommittee alleging that appellant attempted to bribe one "Mickey" Bruce to throw a 1960 college football game between the University of Michigan and the

University of Oregon. *Id.*, pp. 136-156, 169-176. The Board heard and considered appellant's response to other sworn testimony given before a United States Senate Subcommittee and the Florida Racing Commission that appellant was allegedly corrupting public officials. The Board noted and allowed appellant the opportunity to comment on the fact that appellant's horse racing license was revoked by the State of Florida and that appellant was barred from all Florida racetracks. *Id.*, pp. 91-102, 115-126, 134-136. In short, appellant was consistently afforded the opportunity to testify with respect to each item considered by the Board.

At the conclusion of this hearing, the Board voted unanimously to recommend denial of appellant's application for a gaming license. The Board stated four specific grounds for denying the request:

> [T]he applicant is a person whose licensing by the state would reflect or tend to reflect discredit upon the State of Nevada by reason of A, a North Carolina court finding of guilt for conspiracy to bribe an amateur athlete; B, the testimony of one Mickey Bruce in Senate subcommittee hearings that the applicant attempted to bribe him to throw the outcome of the 1960 Oregon-Michigan football game; C, statements by police officers Dardis and Clode to a Senate subcommittee and the Florida Racing Commission that the applicant admitted he was corrupting public officials in return for protection; and D, the applicant's being barred from racetracks and parimutuel operations in the State of Florida.

N.R.S. 463.220(4) provides that the Commission shall consider any recommendation of the Board that a par-

ticular license application be denied. Three days prior to the Commission's scheduled hearing, appellant requested a continuance to allow him to secure, among other things, the "presence" of Mickey Bruce (the football player who testified before the Senate Subcommittee that appellant had attempted to bribe him). The continuance was denied. Prior to the start of the hearing before the Commission appellant's attorney was given the opportunity to again request and argue for a continuance. The Chairman of the Commission denied the request, noting, among other things, that Mr. Bruce resided in California, that he had indicated orally and in writing to Board investigators that he would not, as a result of concern for his safety, appear in Nevada, and that no legal process of the State could compel his attendance.[4] T.C.H., Jan. 22, 1976, pp. 2-38.

Prior to the start of the actual proceeding, the Chairman recessed the meeting to be sure that two Commissioners who had not received the transcript of the Board hearing when it was first ready the day before would have the opportunity to read it. *Id.*, pp. 42-43. The Commission had already made arrangements to have the transcript hand-delivered to appellant's counsel the day it was ready. *Id.*, p. 6.

At the hearing before the Commission, appellant was again represented by counsel, called witnesses on

[4] It is interesting to note, in light of the assertion that appellant was denied due process, that the Commission, in an effort to assure complete fairness, went so far as to allow appellant's attorney to be sworn during the proceedings and give substantive testimony as to what Mr. Bruce would testify to. Appellant's attorney based his unusual testimony upon a telephone conversation he had had with Mr. Bruce wherein, among other things, Mr. Bruce confirmed that he would not appear in Nevada. T.C.H., Jan. 22, 1976, pp. 10-27.

his behalf, and was given the opportunity to testify and comment on the proceedings before the Board and particularly to comment upon the reasons for the recommendation of denial of the application. Indeed, appellant's own counsel moved into evidence the entire transcript of the proceedings before the Board. *Id.*, p. 43. At the conclusion of the hearing, the Commission voted unanimously to deny appellant's application for a State gaming license. *Id.*, p. 121.

Subsequent to the Commission's action, appellant filed a "petition for judicial review" of the decision in the Eighth Judicial District Court of Nevada. The petition was filed pursuant to N.R.S. 463.315, which provides for judicial review of Commission decisions "pursuant to N.R.S. 463.312. . . ." N.R.S. 463.312 is the disciplinary section of the gaming code and deals solely and exclusively with the "complaint; notice of defense; hearing; emergency orders; decision; [and] rehearing *afforded licensees* against whom charges have been brought" (emphasis added). Although the petition alleged violations of the First, Fourth, Fifth, Sixth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution, it did not allege that the licensing provisions of the Nevada statutes (N.R.S. 463.140 and 463.220) were unconstitutional for want of standards. The petition did allege that the decision of the Commission was "made upon unlawful procedure" (¶8(c)), was "unsupported by any evidence" (¶8(d)), and was arbitrary and capricious (¶8(e)).

The State moved to dismiss on jurisdictional grounds, alleging that under Nevada law appellant had no right to judicial review of the denial of a gaming license application. The motion pointed out that

the judicial review provisions of 463.315 related solely to disciplinary proceedings involving those already licensed by the State. The motion was denied.

The District Court held (i) that N.R.S. 463.140 and 463.220 were unconstitutional in that they lacked ascertainable standards; (ii) that the determination of whether to license appellant was "part of the adjudicative process," a "judicial act"; (iii) that "no ascertainable standards" were established by statute or regulation of the Commission for the granting of a gaming license; (iv) that due process was denied appellant since he was "not notified of the charges against him"; and (v) that he was not "given an opportunity to present evidence" or to "cross-examine witnesses. . . ." The District Court thereupon enjoined enforcement of N.R.S. 463.140 and 463.220. Jurisdictional Statement, App. E. The following day, it amended its judgment to enjoin enforcement of said statutes as applied only to appellant Rosenthal. Jurisdictional Statement, App. F.

The State appealed the judgment to the Supreme Court of Nevada, alleging that the motion to dismiss should have been granted, that the relevant statutes and regulations of the Commission set forth sufficient criteria for the consideration of a gaming license application, that appellant had no constitutionally protected interest in an application for a state gaming license, and that appellant received the requisite due process at his hearings. Appellant presented arguments in opposition to the above.

On February 3, 1977, the Supreme Court of Nevada unanimously reversed the judgment of the District Court and reinstated the decision of the Commission

denying the application. Jurisdictional Statement, App. A.

In ruling that the motion to dismiss should have been granted, the court said:

> The legislature carefully has distinguished between persons who have been licensed and those who never have been licensed. In the former case judicial review of disciplinary action is provided; in the latter instance it is not. This is a reasonable distinction since licensees possess property interests which those who have never been licensed do not have. [*Id.* at 37.]

Since the Supreme Court of Nevada found no allegation in appellant's original petition for review that the licensing provisions were unconstitutional and since appellant had never previously been licensed, the court held that the judicial review provisions did not apply, and that appellant's complaint should have been dismissed. Despite this clear holding, the Nevada Supreme Court, in light of the District Court's challenge to the State's gaming statutes, decided "to resolve that issue." In so doing, the court held that the statutes could be read in conjunction with administrative regulations adopted by the Commission pursuant to N.R.S. 463.150(1). Regulation 3.090 dealt specifically with licensing and required that an applicant must satisfy the Commission that he "(a) Is a person of good character, honesty and integrity; (b) Is a person whose background, reputation and associations will not result in adverse publicity for the State of Nevada and its gaming industry; and (c) Has adequate business competence and experience for the role or position for which application is made." The court held that when

read alone *or* in conjunction with the regulations, the statutes set forth adequate standards for the granting of a license to participate in the privileged enterprise of gaming.

The court went on to find that appellant had in fact received procedural due process at the hearings, even though it did not believe that federal constitutional proscriptions were necessarily involved, because the court viewed gaming as a matter reserved to the states within the meaning of the Tenth Amendment to the United States Constitution.

The court noted that as a gaming employee, appellant held a "work permit" under N.R.S. 463.335(3) and that insofar as the denial of the application for a gaming license might be construed as a revocation of the work permit, it would condone no such result. His ability to work as a gaming employee in a position not subject to licensing had never been questioned, and was not an issue in the proceedings, and the court recognized that no revocation of a work permit could take place without notice, hearing and judicial review.

QUESTIONS PRESENTED

We submit that appellant's Jurisdictional Statement has not raised any substantial federal question for this Court's review. Each of appellant's four points are substantively without merit. Moreover, even assuming that a federal question were present, the instant case would be a wholly inappropriate vehicle for resolution of that question, for the reasons set forth below.

To assist this Court, we repeat here each of the four "Questions Presented" by appellant and set forth our position in regard to each of those questions.

APPELLANT'S FIRST "SUBSTANTIAL FEDERAL QUESTION"

(1) Whether N.R.S. 463.140 and N.R.S. 463.220, Which Grant the Nevada State Gaming Control Board and State Gaming Commission Power to Deny Applications to "Unsuitable Persons" and Give Them "Full and Absolute Power and Authority to Deny Any Application [for a Gaming License] for Any Cause Deemed Reasonable by the Board [or Commission]" Lack Ascertainable Standards and Are Thus Unconstitutionally Vague, in Violation of the Due Process Clause of the Fourteenth Amendment.

Even assuming that appellant's first question were before this Court for review, a substantial federal question would be lacking. However, this question is not before the Court. The Supreme Court of Nevada's holding that the challenged statutes were constitutional, in and of themselves, was an alternative holding. The court also ruled that the statutory language could be read in conjunction with administrative regulations adopted by the Commission and that those regulations provided ascertainable and constitutionally sufficient standards.

Moreover, developments subsequent to the decision of the Supreme Court of Nevada have rendered appellant's first question moot. Specifically, the Nevada legislature has amended Chapter 463 of the Nevada Revised Statutes by including therein a new provision incorporating into the gaming statutes certain standards for licensing decisions which formerly appeared in the administrative regulations of the Commission. Since there is no longer a "present, live controversy"

with respect to former Chapter 463, appellant's first question is moot. *See Suggestion of Mootness,* pp. 31-33 *infra.*

Even if the Nevada Supreme Court had based its decision solely upon the language of the State's licensing statutes—which it did not—appellant, in arguing that those statutes are void for vagueness, asks this Court to expand significantly the reach of the void-for-vagueness concept. The licensing statutes are not criminal in nature, nor do they in any way infringe upon an applicant's First Amendment rights. Appellant cites seven of this Court's opinions to support his contention. Interestingly enough, every one of these cases discusses the "void for vagueness" principle in the context of challenged *criminal* statutes or ordinances. Moreover, most of the statutes were perceived by the Court as affecting an individual's First Amendment rights.[6]

The same considerations which motivated the Court's scrutiny in the above-cited cases are wholly lacking in the instant action. Appellant does not stand

[6] *Grayned* v. *Rockford,* 408 U.S. 104 (1972) (antipicketing and antinoise ordinances); *Kunz* v. *New York,* 340 U.S. 290 (1951) (ordinance made it unlawful to hold public worship meeting without first obtaining permit); *Interstate Circuit, Inc.* v. *Dallas,* 390 U.S. 676 (1968) (ordinance made it misdemeanor to exhibit certain films to underage youths); *Staub* v. *City of Baxley,* 355 U.S. 313 (1958) (ordinance made it criminal offense to solicit for membership in an organization without first applying for permit); *Gelling* v. *Texas,* 343 U.S. 960 (1952) (ordinance made it criminal offense to exhibit certain motion pictures without first obtaining permit); *Cline* v. *Fink Dairy Co.,* 274 U.S. 445 (1927) (criminal provision of state antitrust law); *Connally* v. *General Construction Co.,* 269 U.S. 385 (1926) (criminal statute requiring employer to pay wages at "current" rate in "locality" of work).

charged with the violation of a criminal statute. The State of Nevada has not sought to impose a criminal penalty of any sort on him. Appellant does not assert (nor could he) that the State has in any way infringed upon his First Amendment rights. Appellant's challenge to Nevada's gaming statutes arises in his position as an applicant for a state gaming license. Thus, the due process guarantees inherent in a criminal proceeding are not present in the instant case. Appellant's argument that the "void for vagueness" doctrine should be significantly expanded is without basis and without support in this Court's precedents.

The only case that appellant can muster in support of his contention is *Hornsby* v. *Allen,* 326 F.2d 605 (5th Cir. 1964). *Hornsby* is factually inapposite to the instant case. It dealt with the issuance of liquor licenses under a "ward courtesy" system whereby an applicant could not obtain a license without the approval of an elected official in the district in which the applicant sought to conduct business. The Fifth Circuit noted that this practice could result in a qualified[7] applicant being rejected "as a political favor or the result of a clandestine arrangement." *Id.* at 610. In order to protect an applicant from such arbitrary treatment, the court stated that reasonable standards should be prescribed. Appellant here fails to point out, however, that the court expressly held that such standards could be implemented "through reasonable regulations *promulgated by the board,*"[8] which is exactly what the Commission has done in the instant case.

[7] Mrs. Hornsby alleged that she had satisfied the state's requirements pertaining to good moral character, an allegation that is not present in the instant case.

[8] *Id.* at 610 (emphasis added).

In assuming that a license applicant is entitled to full due process considerations, the Fifth Circuit failed to perceive the difference between a license applicant and a license *holder* whose license is revoked. Other circuits have therefore declined to follow *Hornsby, e.g., Lewis* v. *City of Grand Rapids,* 356 F.2d 276, 289 (6th Cir.), *cert. denied,* 385 U.S. 838 (1966), and the Fifth Circuit itself has carefully delimited the case's subsequent application. *Atlanta Bowling Center, Inc.* v. *Allen,* 389 F.2d 713, 716 (5th Cir. 1968) (*Hornsby* "is far from a holding that the Federal Courts sit as a super liquor board or a sort of extra-hierarchial appellate court in the stream of state jurisprudence to review non-constitutional errors of substance or procedure made by state licensing agencies.")

However, even if it were assumed that a state program for the issuance of gaming licenses is subject to a "void for vagueness" analysis, the question framed by appellant does not present a "substantial federal question" necessitating review by this Court. Although the Supreme Court of Nevada did hold that the particular sections, when read in the context of the other provisions of Chapter 463, contained constitutionally sufficient standards, this was only an *alternative* holding. The court also held that any alleged "defects" in the legislation were cured by standards incorporated in administrative regulations adopted by the Commission. As specifically stated by the court:

> . . . the legislature has expressed standards which have been implemented administratively. When one considers the interrelationship of the statutory standards and the regulations adopted administratively, any contention that there is an absence of appropriate standards must fail.

* * *

> Administrative regulations have been adopted by the Commission pursuant to legislative authorization. . . . If we were to assume that the standards announced in NRS 643.140 and 643.220 [sic] are inadequate legislative expressions for the control of licensing in a privileged industry, the implementing regulation would serve to cure the defect since the "gaps" may be filled in administratively. [Jurisdictional Statement, App. A, pp. 37-38 (citations omitted).]

Appellant, in formulating his first question, simply chooses to ignore this portion of the court's opinion. Thus, even if this Court were to decide appellant's first question, it would have no impact upon the rights of the litigants, since the decision of the Supreme Court of Nevada can stand on its alternative holding.

APPELLANT'S SECOND "SUBSTANTIAL FEDERAL QUESTION"

(2) Whether the Supreme Court of Nevada Was Correct in Holding That Gaming Is "a Matter Reserved to the States Within the Meaning of the Tenth Amendment," With the Consequence That There Is "No Room for Federally Protected Constitutional Rights."

Appellant, through the formulation of his second question, seeks to transform dicta of the Supreme Court of Nevada, taken out of context, into a substantial federal question. Appellant terms as "startling" and "novel" the court's statement that gaming is a "matter reserved to the states under the Tenth Amendment." Appellant apparently would be equally startled by the recently released report of the Commis-

sion on the Review of the National Policy Toward Gambling, which reaffirms the historical validity of the Nevada court's statement:

> Throughout American history, the prohibition and regulation of gambling activity has largely been a function of the States.
>
> * * *
>
> The Commission does not believe that the Federal Government, which represents the Nation as a whole, should substitute its judgment for that of the individual States in this area. Gambling has customarily been controlled by State agencies, which can be flexible and responsive to local demands; the Commission finds no public interest in preempting this authority by the imposition of binding national standards. While we express no predisposition on the appropriate roles of State and Federal Governments in the regulation and control of other activities, we do believe that where gambling is concerned there should be a considered reluctance on the part of the Federal Government to interfere with State policies. To the States should be left the determination of . . . how to operate or regulate those forms of gambling that are authorized. . . .
>
> * * *
>
> The proposition that States should determine their own gambling policies is consistent with the historical role played by the Federal Government.[*]

The paramount interest of the states in the regulation of legalized gambling has been recognized by the courts as well. *See, e.g., Medina* v. *Rudman,* 545 F.2d 244 (1st Cir. 1976); *United States* v. *Polizzi,* 500 F.2d

[*] *Gambling in America,* Final Report of the Commission on the Review of the National Policy Toward Gambling (Washington, D.C. 1976), pp. 5-6.

856 (9th Cir. 1974); *Hubel* v. *West Virginia State Racing Commission,* 513 F.2d 240 (4th Cir. 1975); *Marshall* v. *Sawyer,* 301 F.2d 639 (9th Cir. 1962). Perhaps this long-standing regulatory scheme is "novel" and "startling" to appellant, but it most clearly is not to those who have any familiarity with the history of gambling in the United States.

Appellant also argues that the Nevada Supreme Court's assertion that no constitutionally-protected property interest exists in the instant case is so "startling" that mere dicta is transformed into a substantial federal question. Appellant wrenches a portion of one sentence in the court's opinion out of context in an attempt to create an issue. Specifically, appellant quotes the court as saying "we find no room for federally protected constitutional rights" and conveniently omits the first three words of the sentence: "Within this context." Jurisdictional Statement, p. 14. Within the context of the instant case (*i.e.,* appellant's application for a gaming license) there is in fact no federally protected constitutional right asserted by appellant, for appellant, as an applicant for a gaming license, does not possess a constitutionally protected property or liberty interest sufficient to entitle him to the due process guarantees of the Fourteenth Amendment. As this Court stated in *Board of Regents* v. *Roth,* 408 U.S. 564, 570-571 (1972), "to determine whether due process requirements apply in the first place we must look not to the 'weight' but to the *nature* of the interest at stake." (emphasis in original) See pp. 19-23 *infra.*

In any event, even if the State is wrong and some interest of appellant is here entitled to constitutional

protection, appellant's second question does not present a substantial federal question for this Court's review, because the quoted language of the Supreme Court of Nevada is clearly dicta. This is so because the Commission and the Board both proceeded to accord appellant full constitutional protection and the courts fully reviewed his constitutional points. As appellant himself concedes, the Nevada Supreme Court "proceeded forthwith to consider and decide the federal constitutional questions which had been decided by the Nevada district court and which had been briefed and argued before the Supreme Court [of Nevada]." Jurisdictional Statement, p. 11.

The dicta of the Nevada Supreme Court thus cannot provide the basis for a substantial federal question necessitating resolution by this Court. As explained in *Black* v. *Cutter Laboratories,* 351 U.S. 292, 297-298 (1956):

> This Court . . . reviews judgments, not statements in opinions. *Herb* v. *Pitcairn,* 324 U.S. 117, 125-126; *Morrison* v. *Watson,* 154 U.S. 111, 115. See also *Williams* v. *Norris,* 12 Wheat. 117, 118, 120. At times, the atmosphere in which an opinion is written may become so surcharged that unnecessarily broad statements are made. In such a case, it is our duty to look beyond the broad sweep of the language and determine for ourselves precisely the ground on which the judgment rests.

Since the Nevada Supreme Court did in fact pass on each and every constitutional question raised by appellant, any dicta to the contrary does not raise a substantial federal question in the instant case.

APPELLANT'S THIRD "SUBSTANTIAL FEDERAL QUESTION"

(3) Whether N.R.S. 463.315, as Construed by the Supreme Court of Nevada, Improperly Prohibits Appellant from Obtaining Judicial Review of the Denial of His Application for a Gaming License by the Nevada State Gaming Commission in Contravention of Appellant's Fourteenth Amendment Rights.

Even a cursory examination of this Court's precedents indicates that an applicant for a state gaming license does not have a liberty or property interest sufficient to entitle him to the full panoply of procedural protections afforded by the Due Process Clause of the Fourteenth Amendment. In light of the long line of opinions rendered by this Court which have delineated the contours of protected Fourteenth Amendment interests, including *Board of Regents* v. *Roth, supra,* and most recently *Smith* v. *Organization of Foster Families for Equality and Reform,* 45 U.S.L.W. 4638, (decided June 13, 1977) it can hardly be said that a substantial federal question exists on this point. In any event, it is totally unnecessary for the Court to consider the question, since the record of this case clearly demonstrates that the Supreme Court of Nevada granted appellant's request for judicial review and proceeded to consider and decide each and every issue raised by appellant on appeal.

It is fundamental that the requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property, a range of interests which is not infinite. *Board of Regents* v. *Roth, supra,* 408 U.S. at 569-570. This Court has repeatedly ruled that the procedural guarantees of the Due Process Clause apply only in those instances

where a state seeks to remove or significantly alter a status recognized and protected by state law. *Paul* v. *Davis*, 424 U.S. 693, 710-711 (1976). And this Court has consistently looked to state law to determine the nature of the interest which is allegedly entitled to constitutional procedural protection. *Bishop* v. *Wood*, 426 U.S. 341 (1976); *Board of Regents* v. *Roth*, *supra*. *See also Medina* v. *Rudman*, *supra* (status of applicant for greyhound license determined by reference to state law).

An examination of Nevada's gaming statutes conclusively lays to rest appellant's assertion that he has a "state-granted right to acquire, possess and protect" [10] a state gaming license. Contrary to appellant's argument, the Nevada Legislature has clearly established that an applicant has no vested property interest in a gaming license. NRS 463.130(2) expressly provides that a gaming license is a "revocable privilege" and that "no holder thereof shall be deemed to have acquired any vested rights therein or thereunder." The Supreme Court of Nevada was therefore fully justified in holding that "gaming is a matter of privilege conferred by the state rather than a right." [11]

As this Court explained in *Roth*, the Fourteenth Amendment's procedural protection of property is "a safeguard of the security of interests that a person *has already acquired* in specific benefits." *Board of Regents* v. *Roth*, *supra*, 408 U.S. at 576 (emphasis added). Thus, in order to have a constitutionally protected property interest in a benefit, a person "clearly

[10] Jurisdictional Statement, pp. 28-29.

[11] Jurisdictional Statement, Appendix A, p. 35.

must have more than an abstract need or desire for it" and more than a "unilateral expectation of it." Rather, a "legitimate claim of entitlement" to the benefit must exist. *Id.* at 577. Under the law of the State of Nevada, it is manifestly obvious that no citizen (particularly one with a prior criminal record such as appellant) can claim an *entitlement* to a state gaming license.[12]

Appellant argues that he has a fundamental right to participate in the gaming industry as a "common occupation of life." *Meyer* v. *Nebraska*, 262 U.S. 390, 399 (1923).[13] This argument was squarely rejected by the First Circuit in *Medina* v. *Rudman*, *supra*. Noting that "rights of this potency are a special breed," the court stated that

> . . . we do not consider racetrack ownership to be one of life's "common occupations." Gambling is traditionally suspect in our society, and investment in such an enterprise, when permitted at all, is plainly open to the strictest kind of supervision.
>
> We think the state, under its police powers, is entitled, if it elects, to issue racetrack licenses,

[12] Both the Nevada Supreme Court and the State of Nevada recognize that a license holder is entitled to procedural due process before his license can be revoked. As the court stated:

> A reasonable distinction exists between the status of one who seeks to acquire a license, and the status of one who possesses a work permit as a gaming employee. The former does not have existing privileges, but is attempting to acquire them. The latter does have an existing privilege, and is entitled to receive notice and a hearing before his privilege to work as a gaming employee can be nullified. [Jurisdictional Statement, Appendix A, p. 43.]

In the instant case, appellant was seeking the privilege of obtaining a gaming license for the first time.

[13] Jurisdictional Statement, p. 28.

> and to regulate participation thereunder, on a discretionary basis as it has chosen to do here. Given the social evils associated with gambling and the state's revenue interests, the state's choice of means in the selection of licensees is entitled to prevail over the private interests of potential investors. [545 F.2d at 251 (footnote omitted).]

Appellant further argues that his work permit gave him a "legitimate entitlement" to continue working.[14] This is not controverted. The Nevada Supreme Court agreed with appellant, and invalidated the Gaming Commission regulation which previously allowed a work permit to be revoked without judicial review.[15] Indeed, appellant continues to hold a valid work permit.

Appellant finally attempts to characterize the Gaming Commission's actions as the infringement of a "liberty" interest protected by the Fourteenth Amendment. Appellant's argument turns this Court's definition of a constitutionally protected liberty interest on its head. Each and every case cited by appellant involved a state action which resulted in a person losing a previously held status or position.[16]

---

[14] Jurisdictional Statement, p. 29.

[15] Jurisdictional Statement, Appendix A, p. 42.

[16] *Wisconsin* v. *Constantineau*, 400 U.S. 433 (1971) (citizen prohibited from purchasing liquor without notice or hearing); *Goss* v. *Lopez*, 419 U.S. 565 (1975) (student suspended from public school without hearing); *Catrone* v. *Massachusetts Racing Commission*, 404 F.Supp. 765 (D. Mass. 1975), *vacated on other grounds*, 535 F.2d 669 (1st Cir. 1976) (horse trainer prohibited from further presence at racetrack); *cf. Paul* v. *Davis*, 424 U.S. 693 (1976) (damage to reputation alone does not require Fourteenth Amendment procedural protections).

Appellant finally argues that his reputation was injured by the Commission's action in denying his application for a gaming license. The basis for this contention is difficult to fathom. Appellant seeks to indict the Commission for rendering to appellant the very procedural guarantees he seeks. Specifically, appellant argues that the Commission, by listing four specific reasons for denying appellant's application, damaged his reputation. Each fact recited by the Commission, however, had been a matter of public record *prior to* the Commission's action. In addition, the Commission's findings were only published *after* each item had been considered at the public hearing. In fact, appellant himself had listed much derogatory information about himself in his application. If appellant did not realize that his past brushes with the law would be fully considered by the Commission, he is more ingenuous than his record would indicate.

Even if it is assumed that appellant's reputation suffered injury because of the Commission's ruling, this Court has ruled (and appellant is forced to concede) that a person must suffer more than mere injury to his reputation in order to invoke the procedural guarantees of the Fourteenth Amendment. *Paul* v. *Davis, supra.*

As the foregoing discussion indicates, appellant's contention that his "property" and/or "liberty" interests in obtaining a state gaming license entitled him to judicial review under the Fourteenth Amendment does not broach even an insubstantial federal question. This Court's rulings quite clearly foreclose such an argument. But even if this Court wished to consider whether such an interest should be elevated to consti-

tutional status, the instant case is not an appropriate vehicle for such consideration. The reason, quite simply, is that the Supreme Court of Nevada in fact granted appellant's request for judicial review, and carefully considered and decided each and every issue presented by appellant.

APPELLANT'S FOURTH "SUBSTANTIAL FEDERAL QUESTION"

(4) Whether the Procedures Followed by the Nevada State Gaming Commission in Denying Appellant a Gaming License Violated the Due Process Clause of the Fourteenth Amendment.

Appellant's fourth question, like his third, fails to present a substantial federal question for exactly the same reason. Quite simply, appellant, as an applicant for a state gaming license, does not possess a "liberty" or "property" interest in procuring such a license sufficient to require the State of Nevada to cloak the application process with the full array of procedural requirements mandated by the Fourteenth Amendment. *See* pp. 19-23, *supra*. Since the threshold requirement of a constitutionally-protected liberty or property interest is not present in the instant case, this Court need not engage in an evaluation of the procedures afforded to appellant by the State. *Mathews* v. *Eldridge*, 424 U.S. 319, 332 (1976).

However, even if such an evaluation were undertaken, this Court would be hard-pressed to conclude that a substantial federal question is raised by appellant. For as the record clearly demonstrates, the procedures afforded to appellant by the State of Nevada more than amply satisfy the requirements of the Due Process Clause of the Fourteenth Amendment.

Although this Court has consistently held that some form of hearing is required before an individual is finally deprived of a constitutionally recognized property interest, "in only one case, *Goldberg* v. *Kelly*, 397 U.S. at 266-271, has the Court held that a hearing closely approximating a judicial trial is necessary." *Mathews* v. *Eldridge, supra*, 424 U.S. at 333. As the Court explained in *Mathews:*

> In other cases requiring some type of pretermination hearing as a matter of constitutional right the Court has spoken sparingly about the requisite procedures. *Sniadach* v. *Family Finance Corp.*, 395 U.S. 337 (1969), involving garnishment of wages, was entirely silent on the matter. In *Fuentes* v. *Shevin*, 407 U.S., at 96-97, the Court said only that in a replevin suit between two private parties the initial determination required something more than an *ex parte* proceeding before a court clerk. Similarly, *Bell* v. *Burson, supra*, at 540, held, in the context of the revocation of a state-granted driver's license, that due process required only that the prerevocation hearing involve a probable-cause determination as to the fault of the licensee, noting that the hearing "need not take the form of a full adjudication of the question of liability." See also *North Georgia Finishing, Inc.* v. *Di-Chem, Inc.*, 419 U.S. 601, 607 (1975). More recently, in *Arnett* v. *Kennedy, supra*, we sustained the validity of procedures by which a federal employee could be dismissed for cause. They included notice of the action sought, a copy of the charge, reasonable time for filing a written response, and an opportunity for an oral appearance. Following dismissal, an evidentiary hearing was provided. 416 U.S., at 142-146. [424 U.S. at 333-334.]

"Due process" does not specify a fixed, immutable set of procedures to be equally applied in every situation. *Cafeteria Workers* v. *McElroy,* 367 U.S. 886 (1961).Thus, in order to determine the constitutional propriety of procedures afforded an individual in a particular context, a court must analyze the competing governmental and private interests that are affected, *Arnett* v. *Kennedy,* 416 U.S. 134 (1974), and the risk of erroneous deprivation of a protected interest and the possible value of additional procedural safeguards. *Mathews* v. *Eldridge, supra,* 424 U.S. at 335.

As has been previously demonstrated, the only private interest involved in the instant case is the possibility of obtaining a state gaming license. An applicant does not have a legitimate property or liberty interest in procuring such a license. Rather, the only *arguable* interest that an individual has is to be treated fairly and in the same manner as any other applicant. Appellant has never alleged that he has been "singled out" for separate adverse treatment by the State, nor could he hope to support such an allegation. Thus, the private interest involved—the possibility of procuring a gaming license—pales in comparison to other private interests this Court has analyzed in the past.[17]

On the other hand, the interest of the State of Nevada in maintaining the integrity of the state's gaming industry is substantial. The history of Nevada gaming as chronicled in the decisions of various courts clearly demonstrates that it is of paramount importance to the State of Nevada to keep criminal elements from infiltrating legalized gaming.[18]

---

[17] See footnote 16, *supra.*

[18] *See, e.g., Nevada Tax Commission* v. *Hicks,* 73 Nev. 115 (1957).

In *Hubel* v. *West Virginia State Racing Commission, supra,* the Fourth Circuit recognized the substantial state interest involved in maintaining the integrity of legalized gambling. Noting that the *holder* of a racehorse owner's permit had a constitutionally recognized property interest, the court refused to stay the temporary suspension of the permit without notice and a hearing where it was found that one of his horses had been illegally drugged prior to competing in a race. In so holding, the court recognized that the State had two substantial interests to be served. In addition to its humanitarian interest in protecting the health of the horse, the State additionally has "a broader and more weighty interest in protecting the purity of the sport, both from the standpoint of protecting its own substantial revenues derived from taxes on legalized parimutual betting and protecting patrons of the sport from being defrauded." 513 F.2d at 243. The court noted that tampering with a race horse

> is so serious and the consequences so severe that absolute protection . . . to the public is fully warranted. . . . The public is entitled to protection from the continuing danger that one who participates in drugging his horse will do so again, and that one who fails to protect his horse from drugging by others will repeat his negligence. [*Id.* at 244.]

The First Circuit similarly has recognized the substantial interests possessed by a state in the regulation of legalized gambling:

State ex rel Grimes v. *Board,* 53 Nev. 364 (1931); *Marshall* v. *Sawyer,* 301 F.2d 639 (9th Cir. 1962).

> Gambling is traditionally suspect in our society, and investment in such an enterprise, when permitted at all, is plainly open to the strictest kind of supervision.
>
> We think the state, under its police powers, is entitled, if it elects, to issue racetrack licenses, and to regulate participation thereunder on a discretionary basis as it has chosen to do so here. Given the social evils associated with gambling and the state's revenue interests, *the state's choice of means in the selection of licensees is entitled to prevail over the private interests of potential investors.* [*Medina* v. *Rudman, supra,* 545 F.2d at 251 (footnote omitted; emphasis added).]

Legalized gambling plays a larger role in the economy of Nevada than in any other state in the country. Nevada thus has a far greater interest in maintaining the integrity of the industry than do any of her sister states.[19] What the Fourth Circuit recognized with respect to West Virginia and what the First Circuit recognized with respect to New Hampshire applies with even greater force to Nevada, where the gaming industry comprises a substantial portion of the State's economy.

The final factor to be considered in the *Mathews* v. *Elridge* equation is whether the particular procedures employed could have erroneously deprived the individual of a protected interest.

Once again, the short answer to this inquiry is that the appellant does not have a constitutionally protected interest in obtaining a state gaming license. Obviously, there can be no risk of erroneous deprivation

[19] See footnote 1, *supra.*

of an interest that is nonexistent in the first place. However, as already noted, even assuming that appellant did have some cognizable "interest" in obtaining a license, the procedures provided him by the State of Nevada ensured that his application received a full, open and thorough evaluation.

Appellant participated in three separate hearings during the course of this controversy. The first hearing was convened by the Commission to determine the scope of appellant's responsibilties in gaming. At the conclusion of this two-day proceeding, it was determined that appellant was a "key employee" of Argent Corporation and thus required to obtain such a license.

Although state law requires that a key employee file a license application within thirty days of such a finding,[20] the Commission granted appellant's request for a continuance so that he could resolve two pending federal indictments prior to filing his application. The extension granted appellant exceeded 6 months.

After appellant submitted his license application, the Board held a public hearing to allow appellant to present evidence in support of his application and to respond to any information uncovered by the Board's investigation into his background. Appellant was represented by two attorneys at the hearing. He testified in his own behalf. He subpoenaed three employees of the Board, all of whom testified. Fifteen other individuals appeared before the Board and under questioning from appellant's counsel and Board members testified on behalf of appellant. The Board received into evidence seven letters offered by appellant attesting

[20] N.R.S. 463.595(2).

to his character. Appellant was given the opportunity to explain or rebut several detrimental items brought to the Board's attention, including the following:

> —appellant's North Carolina conviction for conspiracy to bribe a college basketball player.
>
> —sworn testimony given before a United States Senate Subcommittee alleging that appellant attempted to bribe one Mickey Bruce to fix a college football game.
>
> —sworn testimony given before a United States Senate Subcommittee and the Florida Racing Commission alleging that appellant was corrupting public officials.
>
> —the revocation of appellant's horse racing license by the State of Florida and the permanent barring of appellant from all Florida racetracks.

The Board, in recommending denial of appellant's application, specifically stated four reasons for the recommendation.

The recommendation of the Board was then considered by the Commission at a separate hearing, pursuant to N.R.S. 463.220(4). At this hearing appellant was again represented by counsel, appeared as a witness on his own behalf and called other witnesses to testify for him. During the course of the proceedings individual Commission members gave appellant the opportunity to comment on the information in the record which concerned them and had been the basis for the Board's recommendation of denial. After the Commission acted, appellant sought and obtained judicial review of the entire process.

It is respectfully submitted that the administrative proceedings, in and of themselves, more than satisfied

the procedural guarantees of the Fourteenth Amendment. The two key elements of procedural due process —notice and an opportunity to be heard [21]—were more than fully satisfied by the procedures afforded appellant by the State of Nevada.

SUGGESTION OF MOOTNESS

The first question presented to this Court by appellant is whether N.R.S. 463.140 and 463.220 are unconstitutionally vague in that they lack ascertainable standards for the granting or denial of license applications. Appellant has chosen to argue that these standards are facially unconstitutional.

The State of Nevada wishes to inform this Court that effective May 16, 1977, the Nevada Legislature amended Chapter 463 to incorporate into that Chapter standards formerly contained in the regulations of the Commission.[22] Specifically, a new section was added to N.R.S. 463.170 as follows:

> 2. An application to receive a license or be found suitable shall not be granted unless the commission is satisfied that the applicant is:
>
> (a) A person of good character, honesty and integrity;
>
> (b) A person whose prior activities, criminal record, if any, reputation, habits and associations do not pose a threat to the public interest of this state or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair or illegal practices, methods and

---

[21] *Bell* v. *Burson*, 402 U.S. 535 (1971).

[22] Chapter 571, Statutes of Nevada, 59th Session of the Nevada Legislature.

activities in the conduct of gaming or the carrying on of the business and financial arrangements incidental thereto; and

(c) In all other respects qualified to be licensed or found suitable consistent with the declared policy of the state.

The State of Nevada respectfully submits that this amendment to Chapter 463 of the Nevada Revised Statutes renders appellant's first question moot. In light of the requirement that the Nevada Gaming Control Act must be read as "a unified legislative plan," *United States* v. *Polizzi, supra,* 500 F.2d at 875, N.R.S. 463.170 mandatorily supplements the challenged provisions since the Board and Commission are obligated to apply its specific standards.

The constitutionality of the challenged provision raises an academic, theoretical question; it no longer presents a live controversy necessitating a decision by this Court. This Court has consistently refrained from passing on the constitutionality of a statute until a case involving it has reached a stage where the decision of a precise or constitutional issue is a necessity. *United States* v. *Petrillo,* 332 U.S. 1, 5 (1947). "If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality . . . unless such adjudication is unavoidable." *Spector Motor Service* v. *McLaughlin,* 323 U.S. 101, 105 (1944). Certainly the question of whether a portion of a statute no longer in force was unconstitutional does not present an "unavoidable" precisely

defined constitutional issue, the decision of which is a "necessity." [*]

CONCLUSION

For all of the foregoing reasons, it is respectfully requested that this Court affirm the judgment of the Supreme Court of Nevada, or in the alternative dismiss the appeal for lack of a substantial federal question or on grounds of mootness.

Respectfully submitted,

ROBERT F. LIST
Attorney General of the State of Nevada

ALVIN J. HICKS
Deputy Attorney General Gaming Division
1150 East William Street
Carson City, Nevada 89710

Of Counsel:

STUART PHILIP ROSS
WALLACE A. CHRISTENSEN
HOGAN & HARTSON
815 Connecticut Ave., N.W.
Washington, D.C. 20006

Attorneys for Appellees.

---

[*] The instant case is thus analogous to *Diffenderfer* v. *Central Baptist Church,* 404 U.S. 412 (1972), in which appellant's challenge to a Florida statute was rendered moot by a revision of the challenged section during the course of the appeal. As the Court noted, "[t]he case has therefore lost its character as a present, live controversy of the kind that must exist if we are to avoid advisory opinions on abstract propositions of law." *Id.* at 414, citing *Hall* v. *Beals,* 396 U.S. 45, 48 (1969). *See also Bryan* v. *Austin,* 354 U.S. 933 (1957); *cf. United States* v. *Alaska Steamship Co.,* 253 U.S. 113 (1920); *Sanks* v. *Georgia,* 401 U.S. 144 (1971); *Richardson* v. *Wright,* 405 U.S. 208 (1972).